

STATE OF THE JUDICIARY ADDRESS
by John C. Holstein, Chief Justice
to Joint Session of the General Assembly
January 11, 1996

Lieutenant Governor, Mr. Speaker, members of the General Assembly, colleagues, and fellow Missourians:

It is a great honor to be the twelfth chief justice since the tradition began in 1974 to be invited to speak to the General Assembly. Both you and I, as public servants, are privileged to stand here today on the broad shoulders of earlier chief justices, senators, representatives, and members of the executive branch. Their foresight in designing and implementing our state system of justice reflects immense wisdom. They were progressive when progress was called for. They exercised restraint when restraint was appropriate.

In recent years the General Assembly has upheld that great tradition. You have continued to provide the tools necessary to make the delivery of justice to Missouri citizens better, faster and more efficient than ever before. The backlogs and delays that exist in other states do not exist in Missouri. The General Assembly has been most helpful in two particular areas. First, in order to meet the challenge presented by an unprecedented growth rate in caseloads, prior chief justices have come to the legislature to seek funding for judicial transfer programs, and for the broader use of our senior judges. The General Assembly and the Governor have responded favorably to those requests in the past. As a result, tens of thousands of cases have been disposed of by judges on transfer and by senior judges. We are grateful to the other two branches of government for assisting the courts. All Missourians should be enormously grateful to the senior judges and to the judges who have been transferred, often at considerable inconvenience and, in the case of senior judges, without receiving full compensation. Last year alone, the number of days our senior judges worked were equivalent to more than 10 full-time sitting judges.

The second area in which the General Assembly in recent years has been most helpful is in providing the courts with ability to automate. Beginning in 1994, the legislature provided for a funding mechanism to develop a statewide computerized court system. The General Assembly has challenged us to create a court system that is more accessible and more effective than ever before.

Meetings are being held around the state with those who will use electronic courts -- appellate judges, trial judges, clerks, attorneys, and state agencies, who routinely need access to court information. We are now beginning to see the first fruit of the court automation project. Through arrangements made with the Court Automation Committee, Missouri statutes and Missouri cases going back to 1950 are now available on compact disk to all trial judges in the state who want them. We hope to put more of our Supreme Court publications, Approved Instructions and judicial bench books on computer disk in the near future. A judge traveling a circuit may carry a complete Missouri law library in a briefcase. In the future, we may be able to have such a library on line. Plans are being made for the Missouri Bar and the Missouri State Courts Administrator to have a home page on the internet so that lawyers and citizens alike may access information about the courts. Lawyers will be able to register for continuing legal education programs, and

information regarding selecting a lawyer, small claims court, or recent court decisions may be located by citizens.

A more important and certainly the more costly aspect of the project is the contract entered into this fall to design an architecture which will provide a statewide judicial information system that will take us well into the next century. Ultimately, that system will allow us the option of electronic filings of pleading, giving of notices, and archiving of court records for retrieval on a 24-hour-a-day basis. Video conferencing will be included in the plan so that some court proceedings may be conducted from remote locations. The contract will give us an architecture for a computer system which will not become obsolete before the system is completed.

As originally conceived, our court automation project required ten years of funding. As you know, the court automation bill as it finally passed only provided for five years of funding. I again commend to you the need to consider extending that funding for the five additional years necessary to complete the project.

As we enter into court automation, we are making every effort not to computerize merely for the sake of computerization. Now is the time to eliminate bad practices and procedure. Every aspect of our judicial process must be open to thorough examination.

The story is told about a young wife who baked a ham every Sunday. Every Sunday she cut the ends of the ham off before she baked it. After watching her do this for a few weeks, her young husband asked her why she did it. She said, "I do it because my mother did it." She then called her mother and asked her why she cut the ends off the ham. Her mother said, "My mother did it." So grandma was called. She asked grandma why she cut the ends off the ham. Grandma replied, "Simple. My pan was too small."

We are trying to be careful as we computerize not to perpetuate a senseless practice merely because "that's how grandma did it." We should not become so steeped in tradition that we are incapable of change.

To obtain the full benefit of computerization will undoubtedly require some statutory changes. We will be coming to you to assist us in making the necessary changes so that we do not continue to cut the ends off the ham.

This brings me to legislation which we are going to ask you to consider and, hopefully, pass during this session of the legislature. It has to do with our present system of court costs. As most of you are aware, that system is extremely complex. Court costs have been used and, in the view of some, overused as a revenue enhancement device. Court costs and fees have historically been a method for offsetting some of the public cost of operating the court system from the users of that system. To ask those who most directly benefit from operation of the court to share in the costs of its operation is not inherently wrong.

At the same time, for the court to fulfill its role and to provide citizens their constitutional rights to due process, access must not be prevented or unduly restricted by the amount of court costs or by the proliferation of costs unrelated to court operations that are charged. The costs for filing

circuit civil cases has risen from \$60 in 1982 to over \$100 in 1995. These costs, surcharges and fees may occur within the case due to service of process, payment of jury fees, copying fees, court reporter transcript fees, etc. These must be sorted out and billed by the clerks of the court. Then the costs must be distributed to the proper agency. Each of you have been provided with a diagram of our court costs system. Larger versions of that same diagram have been set up in the front of each of the two galleries.

The diagram graphically illustrates the present system and why court costs are a prime target for reengineering as we enter the electronic age. The current court costs system is scattered through more than seventy sections of the statutes, beginning in chapter 14 and concluding in chapter 595 of the Revised Statutes. Under the current billing system, the billing may be quite late. It is not at all unusual that the responsible party is dead or that an attorney has lost contact with his or her client who is the responsible party. The billing system is unnecessarily complex. In one associate circuit court, I was shown a receipt form that was more than eighteen inches wide merely so that it could have a box to be filled in for each of the separate court costs involved.

Auditing is quite difficult. There is no system of immediate electronic audit that follows a case from filing through the judge's entry of orders, including assessment of fines and costs, and on to the clerk, who collects the costs, and then to the state or county agencies that receive the funds. Much of this is done manually. Naturally, it must await a manual audit. As you know, those audits often occur only every two or three years.

The final problem and, perhaps, the most important problem, is the public's perception that costs are too high and too complicated. We have regularly heard complaints from people that costs and fines in one county are significantly different for the same type case a few counties away.

Here are the basic solutions which the legislation proposes:

First, to the maximum extent possible, all court costs should be placed in one chapter. In that chapter should be found not only provisions for the amount but the procedures for collection and distribution of the funds. By doing that, it is less likely that some fee or cost required to be collected by law will be missed or will not reach the proper account. In addition, terminology used in all statutes relating to various costs, fees and surcharges will be defined and made uniform.

Second, to the maximum extent possible, funds will be distributed more rapidly to the appropriate state and local government agencies. Provision should be made for electronic transfers of funds to the appropriate agencies at the state and county level.

Third, we hope to provide courts with the same flexibility accorded executive agencies for establishing charges that are directly related to the costs of services provided, such as mileage, copying papers, jury fees, and the like. To the maximum extent possible, these fees should be uniform. Costs charged in one type case in St. Charles County should not vary significantly from costs charged for the same type case in Clay County. Just like executive fees, these charges should always be subject to legislative review but, like executive agencies, the Supreme Court

should have the ability to adopt uniform rules regarding the amount of costs which should properly be recovered from the parties.

Fourth, as part of court automation, a clear trail of what money is collected and where it goes that is capable of electronic audit must be established. If all the fines and costs in a particular case are not collected, that case should be flagged immediately in the system so that at least two people, perhaps the judge who assessed the fine and costs, and clerk responsible for collecting them, will be aware of the shortfall. Court automation, coupled with simplification in court costs in a unified code using uniform terminology and uniform fee schedules, should result in accurate and timely billing, collection and disbursement of court costs.

There may be some immediate costs related to this legislation. I would hope that in the long term, collections would in fact be enhanced. As you can guess from the diagram, there may be some holes in the bucket. If we can make court costs simpler, uniform, understandable and efficient, that will be a major step in earning the confidence of the people we all serve.

I wish I could say that legislation to simplify and clarify court costs is simple and clear. As you can see from the diagram, you are being asked to untie a gordian knot of court costs that has developed over many, many years and to do so without reducing revenues. As we undertake this task, I am reminded that sometimes the hardest things we do can be the most rewarding.

Returning for a moment to the subject of court automation, I wish to point out we have placed a high priority on the planning phase of court automation. We have demanded from our consultants an organized, well thought out approach to automation which sidesteps waste and false starts made by other states who fell into the temptation of quick solutions and wholesale purchases of hardware and off-the-shelf software. As we bring forward the plan, and as you see the complexity of what is required to create the statewide system that is envisioned, we hope that the system will earn your trust, confidence and support.

In this regard, we are hopeful that you will ask questions and closely follow the court automation project as well as our efforts to simplify, clarify and make more efficient the billing, collection and distribution of court costs.

There are other less costly but nonetheless important matters that we have placed before the legislature this year for consideration. One such matter is court security. I would not want to see our courthouses turned into fortresses. But insuring the safety of court staff, lawyers and litigants is essential. Court security in our circuit courts around the state is largely the responsibility of county government. Most county governments have taken that responsibility quite seriously, particularly in view of the events that occurred in Oklahoma City last year. Currently, our Supreme Court security staff is very small. Security equipment that is standard in most urban courthouses, most federal courthouses and some of the courts of appeals is not available for the Supreme Court. A committee appointed last year by the Supreme Court is working on overall recommendations for court security in the state. One of their immediate recommendations is that we strengthen the security of our own building across the street. While we have been fortunate to not have any serious incidents, we would not want to wait until something actually occurs to take action.

The Governor's Commission on the Judiciary recently made nineteen specific recommendations regarding the judicial system. While neither the Judicial Conference nor the Supreme Court has taken a position on the recommendations, I can assure you that members of the judiciary have closely observed the Governor's Commission in its deliberations. The Commission's report is thoughtful and thorough. I commend them for their work. I commend their report to you for your careful consideration. If we in the judiciary can be of any assistance to you, we will gladly make ourselves available for discussing specific topics included in the Commission's report and how those topics will affect court operations.

As previously noted, daunting caseloads are facing the courts in Missouri. In the last ten years, excluding traffic and municipal cases, the overall caseload has grown 25%. In two specific areas, domestic relations and felonies, the growth rate has been even more startling. In domestic relations, the annual number of cases filed has increased 59%. Seventy-four percent more felony cases were filed in 1995 than in 1985.

One way the trial judges have met the challenge is by moving cases faster. The Supreme Court has established case disposition guidelines. Basically, those guidelines provide a framework within which trial judges can measure whether the cases are moving through a particular judge's court within a reasonable time. By proper use of the guidelines, judges are in a better position to track their own efficiency. However, I have always been cautious to remind everyone that the quality of justice cannot be measured by how fast we dispose of cases. Every case and every court's docket is unique. Every case involves the life, liberty or property of some real person. The delivery of quality justice remains the primary focus of our work.

Educational programs have assisted in handling caseloads. In the early 1980's, a program was established to ensure that Missouri's trial judges had an opportunity at least once annually to receive an update on changes in the statutes, new caselaw, and the most current information regarding procedures. This year, for the first time, we are asking for a significant increase in our training budget to provide regional in-service training programs for the clerical staff. Just as it is important that judges keep up to date on new law and innovations in court administration, it is also critical that our clerks be given similar opportunities for continuing education, particularly in view of constantly increasing caseloads. Included in our budget for this year is additional funding to provide training to the clerks of our courts in various locations in the state. We are seeking approval of that important program.

It would be wrong for me to leave you with the impression that transfer programs, continuing education programs, and case disposition guidelines imposed by the Supreme Court were entirely responsible for this state's ability to deal with what appears to be an overwhelming caseload. In point of fact, our trial judges and court clerks simply work harder, longer, and smarter than before. That has given us the ability to meet the challenge of the last ten years. Excluding traffic cases, on average, every judge in Missouri today must dispose of 250 more cases per year than a judge did ten years ago. Ten years ago, the clerks of our state courts were handling \$93 million in child support collections. This past year, those collections had rocketed to over \$300 million. We should all take great pride in what our trial judges and court clerks have accomplished.

The one fact that remains clear is that this growth pattern in caseloads is almost certain to continue into the future. As we face new challenges, there will be an ever greater necessity to give trial courts and clerks the additional tools necessary to help meet the growing demand for services.

At the beginning of my comments, I spoke of the great debt we owe to the members of the General Assembly who, over the course of many years, designed our system of justice. One significant piece of legislation was Missouri's civil code which became effective ten days before I was born. The civil code formed the basis for the Missouri Supreme Court Rules. The Code contained a remarkably simple phrase that established the vision for the Missouri justice system. The statute said that all the laws relating to practices of the courts should be "construed to secure a just, speedy, and inexpensive determination of every action." Those same words were incorporated into Missouri's Supreme Court rules in 1972. I look forward to working with you as we continue to make a just, speedy, and inexpensive determination of every case a reality for the citizens of Missouri.